

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	8:09CR71
	)	
v.	)	
	)	
JERRY WADDLE,	)	ORDER
	)	
Defendant.	)	
_____	)	

This matter is before the Court on the reports and recommendations of the magistrate judge (Filing Nos. 23 and 26), the defendant's statement of objections (Filing No. 27), and the defendant's brief in support of his objections (Filing No. 28). The Court has reviewed the transcript of the proceedings held on April 3, 2009, before the magistrate judge (Filing No. 24), the defendant's motion to dismiss the indictment (Filing No. 17), the defendant's brief in support of that motion (Filing No. 18), the government's response to the defendant's motion to dismiss premised on the Administrative Procedure Act (Filing No. 25).

As reflected in the transcript, the defendant acknowledges that all but one of the issues raised in his motion are controlled by the decision of the United States Court of Appeals for the Eighth Circuit in *United States v. May*, 535 F.3d 912 (8th Cir. 2008), and in *United States v. Howell*, 552 F.3d 709 (8th Cir. 2009), in which the Court found that Title 42, United States Code, Section 16913(d) was constitutional under the

commerce clause. On the basis of these two cases, the defendant admitted that the only new issue raised was Issue No. 3, alleging that the Attorney General's determination of the scope of SORNA's retrospective reach violated the Administrative Procedure Act, 5 U.S.C. § 553, and that as a result, SORNA has never been validly made retroactive to the defendant's prior convictions.

It was on this issue that the magistrate judge ordered additional briefing and then submitted his report and recommendation (Filing No. 26). The Court has reviewed that report and recommendation, the decisions of the United States Court of Appeals in both *United States v. May* and *United States v. Howell*, as well as the district court decisions in *United States v. Gould*, 526 F.Supp.2d 538 (D. My. 2007); *United States v. Cardenas*, 207 WL 4245913, Case No. 07-81108 (S.D. Fla. Nov. 29, 2007); and *United States v. Pitts*, 2007 WL 3353423, Case No. 07-157 (M.D. La., Nov. 7, 2007), and finds that the reports and recommendations of the magistrate judge should be approved and adopted by the Court. Accordingly,

IT IS ORDERED:

- 1) The reports and recommendations of the magistrate judge are approved and adopted;
- 2) The defendant's appeal from the report and recommendation of the magistrate judge is overruled;
- 3) The defendant's motion to dismiss is denied;

4) Trial of this matter is scheduled for:

**Tuesday, July 28, 2009, at 9 a.m.**

in Courtroom No. 5, Roman L. Hruska United States Courthouse, 111 South 18<sup>th</sup> Plaza, Omaha, Nebraska. The parties will have time to prepare for trial or pursue plea negotiations, and the Court's schedule requires the continuance. The ends of justice will be served by continuing this case and outweigh the interests of the public and the defendant in a speedy trial. The additional time between June 23, 2009, and July 28, 2009, shall be deemed excludable time in any computation of time under the requirement of the Speedy Trial Act. 18 U.S.C. § 3161(h)(8)(A) & (B).

DATED this 23rd day of June, 2009.

BY THE COURT:

/s/ Lyle E. Strom

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LYLE E. STROM, Senior Judge  
United States District Court